

TITLE 10 OFFICE OF ATTORNEY GENERAL FOR THE STATE

Proposed Rule
LSA Document #09-378

DIGEST

Amends [10 IAC 3-1-1](#) and [10 IAC 3-1-2](#) regarding tort claims against the state to conform to the current provisions of [IC 34-13-3-3](#). Makes other technical changes. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[10 IAC 3-1-1](#); [10 IAC 3-1-2](#)

SECTION 1. [10 IAC 3-1-1](#) IS AMENDED TO READ AS FOLLOWS:

[10 IAC 3-1-1](#) Tort claims against the state; form

Authority: [IC 34-13-3-6](#)

Affected: [IC 8-15-2-4](#); [IC 8-15-3-7](#); [IC 8-15.7-2-4](#); [IC 9-13-2-73](#); [IC 11-10-8](#); [IC 11-12](#); [IC 12-23](#); [IC 13-11-2-19.3](#); [IC 20-33-8-12](#); [IC 34-6-2-38](#); [IC 34-13-3-3](#); [IC 34-13-3-7](#); [IC 35-33-8](#); [IC 35-46-1-15.1](#)

Sec. 1. (a) A claim for personal injury or property damage against the state of Indiana must be:

- (1) filed on the form prescribed in subsection (b); or
- (2) in writing as prescribed under [IC 34-13-3](#) and this rule.

(b) **The claim form is as follows:**

STATE OF INDIANA
CLAIM FOR PERSONAL INJURY OR PROPERTY DAMAGE

* Use additional sheets if necessary *

- 1. Name of Claimant: _____ Driver's License No.: _____
- 2. Date and Time of Loss: _____
- 3. Exact Location of Loss (Include County, Nearest Crossroad, and Town, etc.):

- 4. Dollar Amount of Loss: _____
- 5. State Agency and State Vehicle Commission Number (If known):

- 6. Names and Addresses of All Persons Involved (If known):

- 7. Address of Claimant at Time of Loss: _____
- 8. Claimant's Current Address and Work/Home Telephone Numbers:

- 9. How was the State Negligent:

- 10. Explanation of What Happened:

I swear and affirm under the penalties for perjury that the foregoing information is true and correct to the best of my knowledge and belief.

Claimant's Signature

Date

****ATTACH COPIES OF MEDICAL BILLS, ACCIDENT REPORTS, VEHICLE REGISTRATION, PHOTOGRAPHS, TWO ESTIMATES OF REPAIR, OR RECEIPTS FOR REPAIRS TO YOUR PROPERTY, AND ANY ADDITIONAL DOCUMENTATION IN REFERENCE TO THIS MATTER.****

Mail this claim form and any attachments by CERTIFIED or REGISTERED mail to:

Office of the Attorney General
Attn: Tort Claims Investigations
IGCS - 5th Floor
402 302 West Washington Street
Indianapolis, Indiana 46204

NOTICE OF TORT CLAIM FORM
for PROPERTY DAMAGE & PERSONAL INJURY
Provided by the State of Indiana - Office
of the Attorney General

Anyone who has a claim for personal injury or property damage against the State of Indiana must either use the following form to file a claim or make the claim in writing as prescribed in Indiana Code 34-13-3 and ~~these rules:~~ **this rule.**

KEEP A COPY OF YOUR CLAIM FORM, YOUR RECEIPTS FOR YOUR BILLS, AND YOUR CERTIFIED OR REGISTERED MAIL RECEIPT.

If your claim is properly filed, the Office of the Attorney General will investigate it and will notify you in writing within 90 days of receipt if your claim is approved. A claim is denied if not approved within 90 days.

DO NOT DELAY MAKING YOUR CLAIM. INDIANA LAW GIVES YOU ONLY 270 (TWO HUNDRED SEVENTY) DAYS AFTER THE LOSS TO MAKE A CLAIM, AND IT MUST COMPLY WITH INDIANA CODE 34-13-3. EACH PERSON WHO HAD A LOSS SHOULD FILE A SEPARATE FORM.

The filing of this claim is part of a legal process. If you have any questions about the right way to file a claim, you should contact an attorney of your choice. The state's attorneys are not authorized by law to assist you with filing ~~this a claim. however, for your information, the following is a list of actions or conditions resulting in nonliability pursuant to Indiana Code 34-13-3-3:~~

~~"Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from~~ **You should be aware that the State is not liable for some losses, including the following:**

- (1) The natural condition of unimproved property.
- (2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose ~~which that~~ is not foreseeable.
- (3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.
- (4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.
- (5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:
 - (A) a set of rules governing the use of the extreme sport area;
 - (B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and
 - (C) a statement that the extreme sport area may be used only by persons operating extreme sport

equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

(6) The initiation of a judicial or an administrative proceeding.

(7) The performance of a discretionary function; however, the provision of medical or optical care, as provided in [IC 34-6-2-38](#) shall be considered ~~to be~~ **as** a ministerial act.

(8) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.

(9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.

(10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.

(11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.

(12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

(13) Entry upon any property where the entry is expressly or impliedly authorized by law.

(14) Misrepresentation if unintentional.

(15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

(16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by ~~section 7 of this chapter.~~ [IC 34-13-3-7](#).

(17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under [IC 12-23](#), a minimum security release program under [IC 11-10-8](#), a pretrial conditional release program under [IC 35-33-8](#), or a community corrections program under [IC 11-12](#).

(18) Design of a highway (as defined in [IC 9-13-2-73](#)), **toll road project (as defined in [IC 8-15-2-4\(4\)](#)), tollway (as defined in [IC 8-15-3-7](#)), or project (as defined in [IC 8-15.7-2-14](#))** if the claimed loss occurs at least twenty (20) years after the public highway **toll road project, tollway, or project** was designed or substantially redesigned; except that this subdivision shall not be construed to relieve the responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, or implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under ~~[IC 20-8-1-5.1-7\(b\)](#)~~ **[IC 20-33-8-12\(b\)](#)**.

~~(21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:~~

~~(A) a computer;~~

~~(B) an information system; or~~

~~(C) equipment using microchips;~~

~~that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of gross negligence may be established by a party by showing failure of a governmental entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an electronic information system error that caused damage or loss. However, this subdivision expires June 30, 2003.~~

~~(22) (21) An act or omission performed in good faith under the apparent authority of a court order described in [IC 35-46-1-15.1](#) that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.~~

(22) An act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield (as defined in [IC 13-11-2-19.3](#)) unless:

(A) the loss is a result of reckless conduct; or

(B) the governmental entity was responsible for the initial placement of the hazardous substances, petroleum, or other pollutants on the brownfield.

(Office of Attorney General for the State; [10 IAC 3-1-1](#); filed Jul 1, 1997, 4:15 p.m.: 20 IR 2994; filed Nov 7, 2003,

SECTION 2. [10 IAC 3-1-2](#) IS AMENDED TO READ AS FOLLOWS:

[10 IAC 3-1-2](#) Claim forms available

Authority: [IC 34-13-3-6](#)

Affected: [IC 34-13-3](#)

Sec. 2. The office of the attorney general will make ~~claims~~ **claim** forms available to all:

(1) state agencies; and ~~to all~~

(2) persons who request a claim form.

(Office of Attorney General for the State; [10 IAC 3-1-2](#); filed Jul 1, 1997, 4:15 p.m.: 20 IR 2996; filed Nov 7, 2003, 12:15 p.m.: 27 IR 825)

[Notice of Public Hearing](#)

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